IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7193 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

J K PATEL

Versus

BHASKERBHAI G PATEL

Appearance:

MR YV SHAH for Petitioner

MR MUKESH H RATHOD for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/02/2001

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2 The challenge is made by the petitioner to the

judgement of the Industrial Tribunal dated 8.9.1989 in Misc. Application (IT) No.4 of 1989.

3 The facts of the case are that the respondent no.1 - union had raised a demand of revision of pay scales, D.A., pension, gratuity, vehicle allowance, medical allowance, part-time Pani Panar Baio and as the negotiations have failed in the conciliation proceedings, the matter has been referred for adjudication to the Industrial Tribunal, Ahmedabad, where it is listed as Reference (IT) No.5 of 1984 and 1103/84. Oral evidence of the respondent-union has been closed and the matter was fixed for oral evidence of the nagarpalika.

4 It is the case of the petitioner that the State of Gujarat has not sanctioned the posts as Pani Panar Baio engaged on the non-scheduled posts, they are unselected and the State of Gujarat was not giving any grant-in-aid to the Nagarpalika, the demands of the Union were so excessive, the Nagarpalika was not in a position to bear the extra financial burden and in such circumstances it had no alternative but to retrench the Pani Panar Baio. Accordingly, they were retrenched from the services with effect from 1.8.1987 after following due procedure and Approval Applications Nos.199 to 220 of 1987 have also been filed. It is stated by the petitioners in the Special Civil Application that the union representatives have remained absent in the Reference proceedings for a period of one year and as the retrenched staff was praying the Tribunal for settling the dispute, the Hon'ble Tribunal had suggested that the parties to negotiate and to arrive at an amicable settlement. As the union representatives remained absent about a period of one year, the retrenched staff appeared before the Industrial Tribunal through their advocate, Mr U.V. Bhatt. The petitioner in its General Meeting vide Resolution No.141 dated 8th July 1988 resolved to settle the disputes and to reinstate all the Pani Panar Baio with backwages and to enhance the wages and to withdraw/settle Reference (IT) No.5/84 and 1103/84. A majority of the workers i.e. 17 out of 22 have accepted the settlement through their advocate and accordingly settlement purshis was filed before respondent no.2 Tribunal and as the settlement was found to be just, reasonable and valid, respondent no.2 was pleased to pass award on 9.1.1989. In pursuance of the said settlement award, the petitioner had passed an order of reinstatement with backwages of the retrenched employees and majority of the workers i.e 17 out of 22 have accepted the reinstatement with back wages and they are in service. They have been paid the arrears of

difference of wages.

5 The respondent-union filed restoration application under Rule 26 for quashing and setting aside the settlement award passed by the Tribunal and under the impugned order that award has been set aside. Hence this petition.

6 Reply to this Special Civil Application has not been filed by the respondent-union and thus averments made therein remained uncontroverted.

7 Having heard the learned counsel for the petitioner and respondent no.1 and going through the order of the Tribunal impugned in this petition, I find that the same is wholly perverse and it cannot be allowed to stand.

8 It is not in dispute that the beneficiaries of the Reference were 22 workers. It is also not in dispute that the Union members were not taking interest in the reference proceedings and they remained absent for one year. This fact also is not in dispute that the services of 22 workers were terminated after following due procedure. In these facts, the beneficiaries in favour of whom the Industrial Tribunal has passed the order were competent to engage their own advocate and settle the matter and the matter has amicably been settled. Those persons have been taken back into services and the arrears have been paid. It is a case where this union may not be happy with this settlement but we have concern and look into the interests of the beneficiaries and not of the Union. Ultimately, it is also concern of the union to see that the workers get the reliefs. I fail to see any justification, reasonableness and trade-union oriented approach in the action of the union to file the restoration application for setting aside the just and reasonable award passed by the Industrial Tribunal. The workers who are beneficiaries of the award have no grievance against the settlement award passed by the Tribunal. It is also not challenged by the union that the satisfaction which has been recorded by the Industrial Tribunal regarding reasonableness and fairness of agreement arrived at between the parties was not proper. The beneficiaries of the settlement have taken all the benefits out of it.

9 Apart from this, it is also not the case of the respondent no.1 that the advocate was not authorised by the beneficiaries to sign the settlement. I find sufficient merits in the contention of the learned

counsel for the petitioner that it was not an ex parte award. It is award on settlement and the learned Tribunal has committed an error of jurisdiction in setting aside of the same. The office bearers of the Union, no doubt, are not signatories to the settlement but, if we go by their conduct, it is really shocking. They have not bothered or cared about the proceedings. They remained absent in the proceedings for one year. This conduct of the office bearers of the union goes to show how they take care and to what extent they are concerned with the rights and grievances of the workmen in the matter. Otherwise also the beneficiaries of the award are happy with it, and the Tribunal should not have entertained the application for restoration of the matter at the instance of union.

10 In the result, this Special Civil Application succeeds and the same is allowed. The judgement of the Industrial Tribunal dated 8.9.1989 in Misc. Application (IT) No.4 of 1989 is quashed and set aside. Rule is made absolute accordingly. Respondent no.1 is directed to pay the costs of this petition to the petitioner which is quantified at Rs.1,000/-.

(S K KESHOTE, J.)
(mohd)